



## MEMORANDUM

### MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

*We strive to be caring, professional and fair*

To: Monroe County Planning Commission  
From: Joseph Haberman, AICP, Principal Planner *L.*  
Through: Townsley Schwab, Senior Director of Planning & Environmental Resources  
Date: March 16, 2010  
Subject: *Administrative Appeal by David Wood, on behalf of 4W Cooks Island Limited Partnership, concerning property located on Cooks Island, having Real Estate No. 00107930.002900*

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**Meeting: March 24, 2010 (initially advertised for March 10, 2010)**

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1 I DECISION BEING APPEALED:

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3 The appellant is appealing a decision by Townsley Schwab, Senior Director of Planning &  
4 Environmental Resources, which was set forth in a letter to the appellant, David Wood, on  
5 July 20, 2009.

6  
7 The precise decision being appealed is a determination that the existing structure on the  
8 subject property is not a lawfully-established dwelling unit and thereby its replacement shall  
9 not be exempt from the Residential Rate of Growth Ordinance (ROGO) permit allocation  
10 system. This decision was made in accordance with §138-22(1) of the Monroe County Code  
11 and Administrative Interpretation 03-108.

12  
13 Location:

14 Address: Cooks Island, approximate mile marker 29 (oceanside)

15  
16 Legal Description: Part Government Lot 2, Newfound Harbor Keys, aka Lot 4W Cooks  
17 Island (0.34 acre)

18  
19 Real Estate Number: 00107930.002900

20  
21  
22 Appellant: David Wood, on behalf of 4W Cooks Island Limited Partnership

23  
24 II RELEVANT PRIOR COUNTY ACTIONS:

25  
26 On July 18, 2006, the Code Enforcement Department opened case #CE06070145. The cited  
27 violation pertains to a permanent canopy erected on the subject property without the benefit  
28 of a building permit. As of the date of this report, the case remains open as the structure has  
29 not been removed nor permitted.  
30

1 On January 22, 2009, the Planning & Environmental Resources Department issued a  
2 memorandum in response to several open code enforcement cases on Newfound Harbour  
3 Key, commonly known as Cooks Island. At that time, a determination as to which of the  
4 existing dwelling units were lawfully-established and thereby exempt from the ROGO was  
5 necessary in order for the property owners to resolve their respective cases. Based on the  
6 available information and documentation in the county's records, staff determined that the  
7 existing structure on the subject property was not lawfully-established and thereby was an  
8 unlawful improvement. The memorandum and an attached letter from the Director of  
9 Planning & Environmental Resources, Building Official and Director of Code Enforcement  
10 was sent to all Cooks Island property owners, including the property owner of the subject  
11 property, 4W Cooks Island Limited Partnership.  
12

13 On May 18, 2009, David Wood applied to the Planning & Environmental Resources  
14 Department for an exemption from the ROGO permit allocation system. Despite the fact that  
15 an appeal was not filed pertaining to the determination in the January 22, 2009 memorandum,  
16 staff permitted Mr. Wood to submit for a new determination if he was able to provide  
17 additional documentation and information not utilized by staff in the previous determination.  
18 Mr. Wood provided additional documentation as part of the application.  
19

20 The Planning & Environmental Resources Department reviewed the additional  
21 documentation and on July 20, 2009, the Director of Planning & Environmental Resources,  
22 Townsley Schwab, issued a letter to David Wood again denying the ROGO exemption  
23 request.  
24

25 David Wood filed an appeal of the decision in the timeframe provided. This appeal was  
26 initially scheduled for the March 10, 2009 public hearing; however the property was not  
27 posted in accordance with the Land Development Code. It was determined that the appeal  
28 should be re-advertised and properly posted for a later public hearing.  
29

### 30 III BACKGROUND INFORMATION:

31

- 32 A. Total Size of Site: 0.34 acres
- 33 B. Land Use District: Offshore Island (OS)
- 34 C. Future Land Use Map (FLUM) Designation: Residential Low (RL)
- 35 D. Tier Designation: Tier 1
- 36 E. Existing Vegetation / Habitat: Partially scarified; with areas of ridge hammock and  
37 mangroves
- 38 F. Community Character of Immediate Vicinity: Single-family residential  
39

### 40 IV REVIEW OF APPLICATION:

41

42 The decision being appealed is a determination that the existing structure on the subject  
43 property is not a lawfully-established dwelling unit and thereby any replacement shall not be  
44 exempt from the ROGO permit allocation system. This decision was set forth in the July 20,  
45 2009 letter (Attachment A) and made in accordance with MCC §138-22(1) (Attachment B)  
46 and Administrative Interpretation 03-108 (Attachment C).

1  
2 As defined in MCC §101-1, a *dwelling unit* is one (1) or more rooms physically arranged to  
3 create a housekeeping establishment for occupancy by one (1) family with separate toilet  
4 facilities. Furthermore, as defined in MCC §101-1, a *permanent residential unit* is a  
5 dwelling unit that is designed for, and capable of, serving as a residence for a full  
6 housekeeping unit which includes a kitchen composed of at least a refrigerator and stove. As  
7 defined in MCC §138-19, *lawfully established for ROGO/NROGO exemption* means a unit or  
8 floor area that has received a permit or other official approval from the division of growth  
9 management for the units and/or floor area.

10  
11 Pursuant to MCC §138-22(1), the ROGO shall not apply to the redevelopment, rehabilitation  
12 or replacement of any lawfully-established residential dwelling unit which does not increase  
13 the number of residential dwelling units above that which existed on the site prior to the  
14 redevelopment, rehabilitation or replacement. Pursuant to MCC §138-21, the ROGO shall  
15 apply to all residential dwelling units for which a building permit is required by [the Land  
16 Development Code] and for which building permits have not been issued prior to July 13,  
17 1992, except as otherwise provided.

18  
19 Therefore, owners of land containing residential dwelling units shall be entitled to one (1)  
20 unit for each such unit lawfully-established. Administrative Interpretation 03-108 provides  
21 the criteria to be used by staff to determine whether or not a residential unit was lawfully-  
22 established.

23  
24 Pursuant to Administrative Interpretation 03-108, a property owner may receive an  
25 exemption from the ROGO permit allocation system if the unit is found to have been:

- 26  
27 • *Lawfully-established* – There is a permit or other official approval from the Division  
28 of Growth Management for the dwelling unit.  
29 -or-  
30 • *Counted in ROGO and the Year 2010 Comprehensive Plan* – If a permit or other  
31 official approval from the Division of Growth Management is not available, the  
32 following information may be used to establish that a residential unit was lawfully-  
33 established: aerial photos showing the structure in existence prior to 1986; Monroe  
34 County property record card showing the existence of the unit prior to 1986; utility  
35 records that show the residential use being served prior to 1986; whether the  
36 residential use could have been a permitted use under the pre-1986 zoning of the  
37 property; occupational licenses showing the residential use being served prior to  
38 1986; and other supporting information.

39  
40 In the July 20, 2009 letter, based on the above criteria, the Director determined that the  
41 existing structure was not a lawfully-established dwelling unit for the following reasons  
42 (provided in *italic*):

- 43  
44 1. *Pursuant to Monroe County Code §138-22 and Administrative Interpretation 03-108, in*  
45 *order to be exempt from the ROGO, one (1) lawful dwelling unit must have been in*  
46 *existence on the effective date of the county's land development regulations (September*

15, 1986) or, if constructed after the effective date, must have been permitted in accordance with the land development regulations and the ROGO permit allocation system. No such record for a dwelling unit was found.

Staff did not locate any building permits on file for real estate number 00107930.002900. Furthermore, staff did not locate any other approval from the Growth Management Division permitting the establishment of a dwelling unit on the subject property or otherwise recognizing the existence of a dwelling unit.

As part of the ROGO exemption application, the appellant submitted information indicating that he planned to construct a new single-family dwelling unit in 1986. Documentation from engineers, surveyors and contractors was included. However, staff was unable to locate any application on file in the Building Department's records for the development. In the administrative appeal application, the appellant states that the Health Department would not accept his application meaning that he could not get an application to the Building Department before new zoning changes went into effect (presumably the residential density requirements cited in the next section).

2. *Currently, the property is located within an OS District. A single-family residence constructed after 1986 would have required ten (10) acres of buildable land to meet the Monroe County density requirements. According to the Monroe County Property Appraiser's records, the property has 0.34 acres of buildable land acres and staff was unable to locate any building permits for this parcel.*

Since 1986, the property has been within an OS District. Pursuant to MCC §130-90, a detached dwelling unit may be permitted as-of-right in the OS District; however the residential density requirements of MCC §130-157 would have prohibited the approval of a new dwelling unit on the property since September 15, 1986. The property is approximately 0.34 acres. In the OS District, there is an allocated density of 0.1 dwelling units per acre and there is no maximum net density. Based on the density regulations, a parcel designated as OS requires at least 10 acres in order to receive approval for a dwelling unit. Therefore, the Growth Management Division could not have approved a new dwelling unit on the property from September 15, 1986 to present.

Prior to 1986, the property was within GU (General Use) district. Pursuant to pre-1986 MCC §19-180, single-family dwellings may have been permitted in the GU district. However, the residential density requirements of pre-1986 MCC §19-180 would also prohibited the approval of a dwelling unit on the property. In the GU district, the minimum lot area was one (1) acre. Lot area was defined as the horizontal land area computed in square feet or acres excluding public rights-of-way, easements or water surface area.

As a note, MCC §130-90 states that camping, for the personal use of the owner of the property on a temporary basis, is permitted as-of-right in the OS District. A residential density is not provided for campsites of this personal nature; however a campsite cannot



1 have permanent structures as it is intended to be primitive. Therefore, camping on the  
2 property by the owner is permitted and has been permitted since 1986.

- 3  
4 3. *Staff was unable to locate a building permit approving a single-family dwelling unit or*  
5 *any other development on the property.*  
6

7 Staff did not locate any building permits on file for real estate number 00107930.002900.  
8 Therefore, there is no building permit or any other approval from the Growth  
9 Management Division permitting the establishment of a dwelling unit on the property, the  
10 construction of the existing structure or any other improvements to the property.  
11

12 Aerial photography was also reviewed. The existing structure is visible in intermittent  
13 aerial photography since 2002. Prior to 2002, staff could not determine the existence of  
14 any structure. No evidence was found that the structure had been in existence since 1992.  
15 It should also be noted that although a structure of the same approximate size and  
16 location is visible in aerial photography in 2002, 2004, 2006 and 2009, the existence of a  
17 structure does not constitute the existence of a dwelling unit.  
18

19 Site visits were also carried out by Planning & Environmental Resources Department  
20 staff on April 5, 2007, February 1, 2008 and June 22, 2009 and Building Department and  
21 Code Enforcement Department staff on June 19, 2006 and August 19, 2009. In 2006 and  
22 2007, staff observed a non-enclosed canopy constructed of metal rods, with a blue tarp  
23 roof. In 2009, staff observed a shed-type structure constructed primarily of plywood and  
24 metal rods, with a blue camouflage-pattern tarp roof. A discarded blue tarp was observed  
25 as well. Recent improvements appeared to have been made in terms of new materials  
26 being added (i.e. plywood walls). No evidence was found that the structure had been in  
27 existence since 1992 or had been built to any building codes as well as planning and  
28 floodplain management regulations.  
29

30 As a note, in the ROGO exemption application, the appellant states that the building is  
31 constructed of "plywood floors and walls, an asphalt corrugated roof, extruded aluminum  
32 floor joist, door, windows, etc." However, photographs also submitted in the ROGO  
33 exemption application, presumably taken by the appellant, dated June 19, 2006, show that  
34 the structure was supported by metal rods, had a tarp for a roof and was not entirely  
35 enclosed. This is presumably why the code enforcement case opened in 2006 referred to  
36 the structure as a canopy. No photographs of the interior were provided.  
37

38 Aerial photographs and ground photographs of the structure from the site visits are  
39 provided in Attachment D.  
40

- 41 4. *Staff reviewed Monroe County Property Appraiser's records and found that the property*  
42 *had been on the tax roll since 1990 and has been assessed vacant each year.*  
43 *Furthermore, the lack of a building listed on the Property Record Card indicates that*  
44 *there was no residential structure on the property at the time of the adoption of ROGO.*  
45

1 The Property Appraiser has assessed the property identified as real estate number  
2 00107930.002900 under a PC code of PC 99 (NON AG ACREAGE 5 AC OR MORE)  
3 from 2008 to present. From 1990 to 2007, the property was assessed as PC 00 (Vacant  
4 Residential). A property on which a single-family residence is located should be assessed  
5 as PC 01 (Single-Family Residential). There is no record of the property ever having an  
6 assessment of PC 01 or any other assessment that would have been assigned to a property  
7 on which a dwelling unit was located.

8  
9 Furthermore, the 2009 Monroe County property record card for real estate number  
10 00107930.002900 does not show any building value or miscellaneous improvement value  
11 on the parcel since the real estate number's establishment in 1990. In addition, the  
12 appraised value of the property (total land value) from 1990 to 2005 was \$34, a figure  
13 that indicates that there was not any permanent development on the property as  
14 permanent development, especially a dwelling unit, would carry a value of greater than  
15 \$34. The total land value escalated to \$37,400 from 2006-2007 and decreased to \$15,000  
16 from 2008-2009; however continued to show no building values during those times.

17  
18 Temporary structures or unlawful structures not reported to the Monroe County Property  
19 Appraiser would not be included in building value on the property record card.

- 20  
21 5. *The Monroe County Planning & Environmental Resources Department issued a*  
22 *memorandum, dated January 22, 2009. The purpose of the letter was to determine the*  
23 *number of lawfully established dwelling units on Cooks Island. This memorandum was*  
24 *provided to all property owners on Cooks Island. The subject property was not awarded*  
25 *an exemption at that time.*

26  
27 In early 2009, the Planning & Environmental Resources Department carried out an  
28 island-wide study of the 41 parcels on Cooks Island in order to determine which of the  
29 existing structures were a) lawful dwelling units, b) lawful dwelling units with  
30 unpermitted improvements that required after-the-fact building permits or c) unlawful  
31 structures or dwelling units that should be removed. At that time, it was determined that  
32 the subject property did not have a lawful dwelling unit and that the existing structure  
33 should be removed.

34  
35 All of the properties which were determined to have a lawful dwelling unit, and thereby  
36 be ROGO exempt, had a Growth Management Division approval of the structure (i.e. a  
37 building permit) and/or Property Appraiser documentation that the structure was in  
38 existence as a residential structure prior to 1990. The subject property had neither.

- 39  
40 6. *The Boundary Survey, dated June 18, 1986, submitted with the application indicates the*  
41 *existence of three (3) structures on the property at that time, however it does not confirm*  
42 *the use of structures, nor does it confirms their continued existence.*

43  
44 The appellant provided a boundary survey by J.B. Case, conducted June 17 1986 and  
45 signed June 18, 1986. The survey is a copy and is not originally signed or sealed by the  
46 surveyor.

1  
2 The survey shows three hand drawn structures labeled only as buildings; however none  
3 of the structures' exact locations are cited or their dimensions provided. Therefore, their  
4 scales, sizes and precise locations cannot be determined from the survey. Furthermore,  
5 none of the structures are indicated to be a residential dwelling unit or residential in use.  
6

7 After reviewing the aerial photography and site visit information showing the size and  
8 location of the existing structure, staff has determined that there is no evidence  
9 supporting that the any of the buildings shown on the survey are the existing structure.  
10 Furthermore, in the administrative appeal application, the appellant states that there is  
11 now "one dwelling supported by some of the same post, and materials from one of the  
12 old beach huts" which indicates the existing structure was not one of the three buildings  
13 shown on the survey.  
14

15 It should be also considered that the survey is an unsealed copy and it includes hand  
16 drawn determinations, meaning its depictions are subject to some scrutiny.  
17

18 Other Information:  
19

20 As part of the administrative appeal application, the appellant submitted a Sellers  
21 Agreement dated August 9, 1984. Under "Further Description" the agreement states  
22 "Beautiful ocean front property with two (2) beach huts enclosed with bahamas shutters.  
23 Separate bathroom/shower building...". This information corresponds with the 1986  
24 boundary survey; however it should be noted that a shower building and beach hut do not  
25 necessarily constitute a dwelling unit. Furthermore, being referred to in a sellers  
26 agreement does not mean the structures were really in existence, lawfully in existence or  
27 in existence beyond the date referred to in the document, June 18, 1986. In addition, this  
28 document is not found in any Growth Management Division records and therefore the  
29 information contained in the description was never approved by any staff.  
30

31 As part of the administrative appeal application, the appellant submitted a notarized  
32 witness affidavit stating that a "beach hut" was in existence from 1985 to 2009.  
33 Although there is evidence that there have been structures located on the subject property  
34 periodically since the 1980s, staff found no evidence supporting that any structure  
35 continuously existed on the property from 1985 to present.  
36

37 As part of the administrative appeal application, the appellant submitted documentation  
38 from Donald Craig Associates from 1990 indicating that Mr. Craig was retained to assist  
39 the property owner in a beneficial use determination. It should be noted that this  
40 information does not support the existence of a dwelling unit nor references an existing  
41 dwelling unit. The fact that in the documentation Mr. Craig states that he believes a  
42 beneficial use application is the "only alternative" could be interpreted to dispute the  
43 issue that there was a dwelling unit on the property at that time.  
44

45 As part of the administrative appeal application, the appellant submitted plans for a  
46 vacation cabin; however these plans are copies and do not match the orientation and size

1 of structure in existence. Furthermore, staff was not permitted to enter the structure and  
2 the appellant provided not interior photographs.

3  
4 V RECOMMENDATION:

5  
6 In conclusion, the Director of Planning & Environmental Resources' decision to deny the  
7 ROGO exemption request was based on several findings of fact, as provided in this staff  
8 report.

9  
10 There is no information definitively supporting that any structure, nonetheless a dwelling  
11 unit, was in existence from 1986 until 2002. Furthermore, it appears that the existing  
12 structure, as well as the beach huts and the other structure in existence in 1984 and 1986,  
13 were unlawful improvements, constructed without the benefit of permits. Pursuant to  
14 Administrative Interpretation 03-108, an exemption cannot be granted to replace an unlawful  
15 dwelling unit.

16  
17 The ROGO shall apply to all residential dwelling units for which a building permit is  
18 required by the Land Development Code and for which building permits have not been  
19 issued prior to July 13, 1992, except as otherwise provided. Although the existing structure  
20 has been in existence for several years as seen in the aerial photography since 2002, there is  
21 no information available, other than the property owner's statements, supporting that the  
22 existing structure was in existence prior to 2002, nonetheless 1992. Furthermore, its  
23 existence for the past eight or so years does not constitute legality. Due to the isolation of the  
24 property, an unlawful improvement can exist for some time before discovered and cited by  
25 the Code Enforcement Department (the property was cited in 2006). Again, pursuant to  
26 Administrative Interpretation 03-108, an exemption cannot be granted to an unlawful  
27 dwelling unit.

28  
29 In addition, there is no evidence the existing structure even constitutes a lawful dwelling unit  
30 as defined in the Monroe County Code. A dwelling unit is one (1) or more rooms physically  
31 arranged to create a housekeeping establishment for occupancy by one (1) family with  
32 separate toilet facilities. Based on separate site visits carried out by Planning &  
33 Environmental Resources Department, Building Department and Code Enforcement  
34 Department staff, the existing structure would not meet this definition. Although staff was  
35 not permitted to enter structure to verify if there was a bathroom and kitchen area, the  
36 appellant provided no documentation other than a cabin floor plan showing that bath/kitchen  
37 (which staff determined did not match the size and proportions of the existing structure).

38  
39 Therefore, based on a review of all of the available information, staff has found there was not  
40 a lawful permanent structure, and thereby a dwelling unit, on the property as of 1992. There  
41 are no building permits on file for any structure and the Monroe County Property Appraiser's  
42 office never assessed the property as anything other than vacant since 1990.

43  
44 The ROGO shall not apply to the redevelopment, rehabilitation or replacement of any  
45 lawfully-established residential dwelling unit which does not increase the number of  
46 residential dwelling units above that which existed on the site prior to the redevelopment,



1 rehabilitation or replacement. Using the records and criteria set forth in Administrative  
2 Interpretation 03-108, staff has found that the existing structure was not lawfully-established  
3 and that there was no dwelling unit in existence in 1992 and thereby requests that the  
4 Planning Commission uphold the decision of the Senior Director of Planning &  
5 Environmental Resources.

1  
2  
3

Attachment A:  
Letter to David Wood from Townsley Schwab, Senior Director of Planning &  
Environmental Resources, dated July 20, 2009

**County of Monroe**  
**Growth Management Division**

**Planning & Environmental Resources  
Department**

2798 Overseas Highway, Suite 410  
Marathon, FL 33050  
Voice: (305) 289-2500  
FAX: (305) 289-2536



**Board of County Commissioners**

Mayor George Neugent, Dist. 2  
Mayor Pro Tem Sylvia J. Murphy, Dist. 5  
Kim Wigington, Dist. 1  
Heather Carruthers, Dist. 3  
Mario Di Gennaro, Dist. 4

*We strive to be caring, professional and fair*

July 20, 2009

4W Cooks Island Limited Partnership  
ATTN: David Wood  
15228 Knots Landing  
Fort Myers, FL 33908

RE: ROGO Exemption Request for Cooks Island, Part Government Lot 2, New Found Harbor  
Keys, AKA Lot 4W Cooks Island (.34 AC), Real Estate Number 00107930.002900

Mr. Wood,

You requested a determination as to whether one (1) residential dwelling unit is exempt from the Residential Rate of Growth Ordinance (ROGO) on the above-described premises.

Pursuant to §138-22 of the Monroe County Code, the ROGO shall not apply to the redevelopment, rehabilitation or replacement of any lawfully-established residential dwelling unit that does not increase the number of dwelling units that existed on the site. Therefore, owners of land shall be entitled to one (1) dwelling unit allocation, exempt from the ROGO permit allocation system, for each dwelling unit lawfully-established on a given property. Administrative Interpretation 03-108 provides the criteria to be used by staff to determine whether or not a dwelling unit was lawfully-established:

- (a) A permit or other official approval from the Division of Growth Management for the dwelling unit:

No Monroe County building permits have been issued for development of the property. The applicant submitted evidence that building plans for a single-family dwelling unit were drawn and planned for submittal to the Building Department in 1986. However, these plans are not in the Building Department's records.

- (b) If a permit or other official approval from the Division of Growth Management is not available, the following information may be used to further support or establish that a dwelling unit was lawfully-established:

*Site Visit:* A site visit was conducted by Bill Harbert, Planner, on June 22, 2009. Only a storage shed was present on the property.

*Land Use District:* The property is located in an Offshore Island (OS) District, in which a detached single-family detached dwelling is a permitted use on a parcel of 10 or more acres.

*Aerial Photography:* Aerial photography from 1982 to 2008 cannot confirm the existence of a structure on the property due to the altitude from which the photographs were taken. Therefore aerial photography cannot be used as evidence for or against the existence of a structure on the property from 1982 to 2008.

*Monroe County Property Record Card:* The Property Appraiser currently assesses the property under a property classification code of 99-Non aggregated acreage 5 acres or more. Their records indicate that the lot has been on the tax roll from 1990 to 2008, and has been listed as vacant each year.

*Utility records:* No utility records were submitted for review.

*Whether the residential use could have been permitted under the pre-1986 zoning:* Prior to 1986, the property was within the GU General Use District. Single-family homes were permitted uses.

*Other Information:* A boundary survey, dated June 17, 1986, was submitted by the applicant for review. The survey showed three (3) small structures on the property, however their specific use was not indicated on the boundary survey.

Based on a review of the records, the Planning & Environmental Resources Department found that no residential dwelling units were lawfully-established and thereby no replacements shall be exempt from the ROGO system, for the following reasons:

1. Pursuant to Monroe County Code § 138-22 and Administrative Interpretation 03-108, in order to be exempt from the Rate of Growth Ordinance (ROGO), one (1) lawful dwelling unit must have been in existence on the effective date of the county's land development regulations (September 15, 1986) or, if constructed after the effective date, must have been permitted in accordance with the land development regulations and the ROGO permit allocation system. No such record for a dwelling unit was found.
2. Currently, the property is located within an OS District. A single-family residence constructed after 1986 would have required ten (10) acres of buildable land to meet the Monroe County residential density requirements. According to the Monroe County Property Appraiser's records, the property has .34 acres of buildable land and staff was unable to locate any building permits for this parcel.
3. Staff was unable to locate a building permit approving a single-family dwelling unit or any other development on the property.

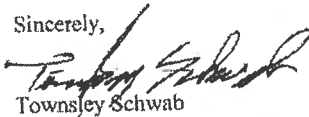


4. Staff reviewed Monroe County Property Appraisers' records, and found that the property has been on the tax roll since 1990, and has been assessed as vacant each year. Furthermore, the lack of a building listed on the Property Record Card indicates that there was no residential structure on the property at the time of the adoption of ROGO.
5. The Monroe County Planning & Environmental Resources Department issued a memorandum, dated January 22, 2009. The purpose of the letter was to determine the number lawfully established dwelling units on Cooks Island. This memorandum was provided to all property owners on Cooks Island. The subject property was not awarded an exemption at that time.
6. The Boundary Survey, dated June 18, 1986, submitted with the application indicates the existence of three (3) structures on the property at that time, however it does not confirm the use of the structures, nor does it confirm their continued existence.

We trust that this information is of assistance. If you have any questions regarding the contents of this letter or if we may further assist you, please feel free to contact our Marathon office at (305) 289-2500.

You may appeal this decision. If you choose to do so, please contact the Planning Commission Coordinator, Ms. Debby Tedesco, at (305) 289-2500 for the necessary forms and information. The appeal must be filed with the County Administrator, 1100 Simonton Street, Gato Building, Key West, FL 33040, within thirty (30) calendar days from the date of this letter. In addition, please submit a copy of your application to Ms. Tedesco, Planning Commission Coordinator, Monroe County Planning Department, 2798 Overseas Hwy, Suite 410, Marathon, FL 33050-2227.

Sincerely,



Townsley Schwab  
Senior Director of Planning and Environmental Resources

Attachment B:  
§138-22(1) of the Monroe County Code

**Sec. 138-22. Type of development not affected.**

The residential ROGO shall not apply to the development described below:

(1) Redevelopment on-site. Redevelopment, rehabilitation or replacement of any lawfully established residential dwelling unit or space that does not increase the number of residential dwelling units above that which existed on the site prior to the redevelopment, rehabilitation or replacement shall be exempt from the residential ROGO system.

1  
2

Attachment C:  
Administrative Interpretation 03-108

Monroe County Department of Planning and Environmental Resources  
Administrative Interpretation

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October 22, 2003

TO: **Growth Management Staff**

FROM: **Aref Joulani, Director of Planning  
& Environmental Resources**

**ADMINISTRATIVE INTERPRETATION NO: 03-108**

RE: **Lawfully Established Units and/or Floor Area**

**Issue:**

The County regulations are designed to control the amount and location of both residential and non-residential development. With the difficulty, limitations, and time involved in obtaining ROGO and NROGO allocations, and the moratorium on new transient units more and more property owners are trying to find ways to define and maximize the "as-of-right" redevelopment potential of their properties.

A major problem is the difficulty in finding old records and permits issued before 1986. The record is spotty and complete files may be found for one property and nothing for another, although there may be reasons to believe both properties received some permits.

A consistent method needs to be followed to determine *lawful establishment for the following situations*:

- Is a property entitled to one or more ROGO exemptions for transient or residential units that may be use on site or transferred (TRE)?
- How much floor area on a site is NROGO exempt and may be replaced on site or transferred to another appropriate site?

**Interpretation:**

Sections 9.5-120.4 and 9.5-124.3 states that for development to not be affected by the requirements of obtaining a ROGO or NROGO allocation the residential unit, space or floor area must be *lawfully established*.

A landowner will receive an exemption from the ROGO or NROGO allocation system if his property meets the following test:

- *Lawfully-established* - A permit or other official approval from the Division of Growth Management for the units and/or floor area; and
- *Counted in ROGO and 2010 Comprehensive Plan* - Proof that the residential units(s) or amount of floor area was in existence and included in the April 1990 census. The census was used to determine the number of existing residential units that is the basis for ROGO and NROGO.



If a permit or other Growth Management approval is not available the following may be used to establish that the property was *lawfully-established*:

- Aerial photographs showing existence of the dwelling unit/non-residential structure prior to 1986 – the date the LDRs and Land Use District maps were adopted. The map designation pre-1986 of many properties is different from today's designation and the uses permitted in the district are different. This answers the question of , “If the unit or floor area could have been permitted?”; *and*
- County property record card showing the existence of the unit or floor area prior to 1986. After 1986 the permit records are considered complete and a permit is required to demonstrate that the unit was lawfully established, the existence of the unit or floor area prior to 1986 is an indication of what the use of the structure was at that time; and
- Utility records for the period 1986-1991 that show the use was being served. ROGO is based on the 1990 census count of dwelling units; to be counted in the census someone had to be living in the unit. All of the years are not required if 1990 is available; and
- The use could have been a permitted use under the pre-1986 zoning of the property. This not only refers to the type of use but also the construction. For example: a residential unit could not have been permitted below flood level after January 1, 1975, therefore a structure built in 1980, below flood level, could not have been lawfully established as a residential unit.
- To help establish non-residential use of a property Occupational Licenses (1986-1991), if available, should also be submitted. The amount of nonresidential floor area that may be allocated is based on the floor area existing in 1990 (239 square feet for each residential unit counted in the census).

Additional information will be required to help establish the number of units for mobile home and/or recreational vehicles (RVs) in parks:

- The number of units in the mobile home surveys taken in the late 1980s and early 1990s may be used as an indication, but it should be recognized that the number on site, at any one point in time, may have varied from the actual number.
- The number of recreation vehicles included on the Health Department Licenses as provided for in F.S., chapter 513 for the year 1996 are the maximum number of RVs that may be on the site. Both mobile homes and RVs require a residential ROGO and prior to adoption of the 2010 Comprehensive Plan could be interchanged. Policy 101.2.6 prohibits new transient residential units, including RV spaces, until December 2006. In a district that allows mobile homes and RV spaces (URM), a mobile home may be permitted without a ROGO allocation if a RV space is removed.
- Demolition permits if mobile homes have been removed.
- Occupational Licenses if available for the years 1990 through 1996.

Note: Living in an abandoned shed does not make it a residential unit and an old mobile home used for storage does not become floor area. If the use could/would not have been permitted, it may not be used as an exemption from ROGO.

There will be cases where the applicant and staff are unable to provide all the information required to determine if the structure is lawfully established and in use in 1990. Other information and “proof” of use may be provided to the Planning Director for consideration.

\*This Administrative Interpretation was prepared with the Planning Commission to provide criteria for determining “lawfully established” and consistency in determination of and awarding of ROGO and NROGO exemptions and approval of TRE and the transfer of non-residential floor area.

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Attachment D:  
Site Photographs



Aerial Photograph of Cooks Island (2009)



Aerial Photograph of Subject Property (2009)





Photograph of "Canopy" by Code Enforcement Dept. Staff (June 2006)



Photograph of "Canopy" by Code Enforcement Dept. Staff (June 2006)





Photograph of "Canopy" by Planning Dept. Staff (April 2007)



Photograph of "Canopy" by Planning Dept. Staff (February 2008)





Photograph of Existing Structure by Planning Dept. Staff (June 2009)



Photograph of Existing Grill by Planning Dept. Staff (June 2009)





Photograph of Existing Structure by Planning Dept. Staff (June 2009)



Photograph of Existing Structure by Planning Dept. Staff (June 2009)





Photograph of Existing Structure by Planning Dept. Staff (June 2009)



Photograph of Existing Structure by Code Enforcement Dept. Staff (August 2009)





Photograph of Site by Code Enforcement Dept. Staff (August 2009)



Photograph of Existing Structure by Code Enforcement Dept. Staff (August 2009)